

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Alana Ihne	Team: Team # 7	CCRB Case #: 200715450	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 10/13/2007 10:40 AM	Location of Incident: § 87(2)(b)	Precinct: 120	18 Mo. SOL 4/13/2009	EO SOL 4/13/2009	
Date/Time CV Reported Mon, 10/22/2007 5:42 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 10/22/2007 5:42 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Eric Dym	01800	933762	120 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Frank Gigliotti	00330	938563	120 PCT
2. POM Joseph Torres	17825	943883	120 PCT
3. POM James Vilaichit	01850	937690	120 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Eric Dym	Abuse: PO Eric Dym threatened to arrest § 87(2)(b)	§ 87(2)(b)
B.POM Eric Dym	Discourtesy: PO Eric Dym spoke obscenely to § 87(2)(b)	§ 87(2)(b)

### Synopsis

On October 13, 2007 at approximately 10:30am, § 87(2)(b) and her neighbor § 87(2)(b) § 87(2)(b) had a verbal dispute at their residence, § 87(2)(b) in Staten Island. § 87(2)(b) called 911. PO Eric Dym, PO James Vilaichit, PO Frank Gigliotti and PO Joseph Torres arrived on scene. § 87(2)(b) stated that an officer, who was identified by the investigation as PO Eric Dym, told her that he would break down her door and arrest her (Allegations A) § 87(2)(b) also stated that PO Dym used profanity against her (Allegation B).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) was informed of both the mediation and investigation processes. § 87(2)(b) rejected mediation because she is not comfortable seeing the officers again.

### Summary of Complaint

§ 87(2)(b) *called the CCRB's call processing system to make a complaint on October 22, 2007(encl. 4a-4b).* § 87(2)(b) *was interviewed at the CCRB on November 5, 2007 (encl 5a-5e.).* § 87(2)(b), § 87(2)(g)

On October 13, 2007 at approximately 10:30am, § 87(2)(b) received an eviction notice, which she found on the floor of her apartment. She was upset and was ranting, raving, cursing, and slamming doors. This was not targeted at anyone specifically.

A woman named § 87(2)(b) § 87(2)(b) who lived on the right side adjacent to § 87(2)(b) came to her door to angrily tell her to be quiet. § 87(2)(b) swore at § 87(2)(b) who told her to leave, chasing her back to her apartment. § 87(2)(b) then banged on § 87(2)(b)'s door, telling her never to do what she had done again, and telling her to "shut the f\* up." § 87(2)(b) called the police. The landlord, § 87(2)(b) lives in the apartment on the top floor and Ms. § 87(2)(b) and § 87(2)(b) live in the two downstairs apartments. The whole house is under § 87(2)(b).

About 10-20 minutes after the 911 call, three or four uniformed officers arrived, and questioned § 87(2)(b). The officers were quite rude when arriving, banging on the door, shaking the doors and saying, "This is the police, we're here." § 87(2)(b) told them to hang on, as she was on the phone with her mother. The police responded that they did not want to hear it, and told § 87(2)(b) that if she did not hang up the phone on her mother, they were going to break down the door.

§ 87(2)(b) hung up the phone on her mother and opened the door. PO Eric Dym who was identified by the investigation pointed at her, and said, "Next time you don't open this door, we are going to arrest you and we are going to break down this door, because nothing is more important than to answer the door for the police. We don't care what you are doing; you better answer that door when we knock on it."

§ 87(2)(b) replied while crying, that the officers did not understand what her § 87(2)(b) had done. Meanwhile, § 87(2)(b) was speaking to an officer, telling the officer that § 87(2)(b) had a knife on her.

§ 87(2)(b) overheard § 87(2)(b)'s claim, and § 87(2)(b) responded by denying that she had a weapon. PO Dym asked § 87(2)(b) "What the fuck is going on in here?" and then he asked her if she had been smoking dope, claiming that the house smelled like dope. She denied this. PO Dym stated that he would arrest her if there was dope. He then said, "You should see yourself the way you look now. You should see yourself on a camera. You would see that you look shitty." She asked him why he was talking to her like that, and he responded, "I want you to stop your shit." Meanwhile, PO Joseph Torres who was

identified by the investigation, was in the hall outside of § 87(2)(b)'s apartment, listening. § 87(2)(b) finally arrived, but the officers informed him that they were in control.

§ 87(2)(b) told the officers that they could search her house, but they responded that they were going to arrest her because of the way she was acting, because they believed that she had been trying to intimidate § 87(2)(b) and because they believed that she had a weapon.

PO Dym had informed § 87(2)(b) that she had two choices. The choices were to go with the officers to the psychiatric center to get checked out or be put in handcuffs and brought to the precinct to be booked.

At this point, PO Dym, PO Torres and PO James Vilaichit, who was identified by the investigation, were in the apartment with § 87(2)(b) who disputed that, "this shouldn't happen." § 87(2)(b) informed the officers of the choices PO Dym had given. § 87(2)(b) overheard PO Vilaichit say to PO Torres that "this is he said she said," and indicated that § 87(2)(b) should not be arrested. § 87(2)(b) agreed.

PO Dym backed off and said that they were not going to arrest her, but stated that if there was one more complaint, she would be arrested. § 87(2)(b) asked what would happen if § 87(2)(b) filed a false complaint. PO Dym responded that § 87(2)(b) would not be likely to do that. The officers then left.

§ 87(2)(b) added that she was upset at the time of the incident, using obscenities, but not directing these toward the officers. § 87(2)(b) suffers from bipolar disorder and believed that § 87(2)(b) knew this. She did not know if § 87(2)(b) mentioned this to the officers. She was on her medication during the incident. She does not do drugs and she does not drink and did not do so on the day of the incident.

PO Eric Dym was described as a white male who was about 6'2 in height and had blonde hair and blue eyes.

PO Joseph Torres was described as a Hispanic male with black hair who weight approximately 150 pounds.

PO James Vilaichit was described as an Asian male with black hair was about 5'6 in height with a medium build.

### **Results of Investigation**

#### **Attempts to Locate Civilian Witnesses**

On March 17, 2008 a call was made to § 87(2)(b). § 87(2)(b) stated that on October 13, 2008, § 87(2)(b) received an eviction notice and started banging on the wall. § 87(2)(b) opened her door and told her to stop banging on the wall. § 87(2)(b) came out of her apartment and told § 87(2)(b) to shut up and started cursing at § 87(2)(b). § 87(2)(b) started charging towards § 87(2)(b) and § 87(2)(b) closed her door. § 87(2)(b) started kicking § 87(2)(b)'s door and broke her door. § 87(2)(b) called the cops. Four officers showed up on the scene. The officers were knocking on § 87(2)(b)'s door and § 87(2)(b) was on the phone and would not come to the door. The officers knocked on the door and told § 87(2)(b) to open the door. § 87(2)(b) waited a couple of minutes and then she opened the door. § 87(2)(b) was telling the officers that § 87(2)(b) does drugs. § 87(2)(b) stated that the officers never "stepped out of line." The officers were talking to § 87(2)(b) and told her to stay away from § 87(2)(b). § 87(2)(b) denied that any officer told § 87(2)(b) that they were going to arrest her or break down her door. § 87(2)(b) denied that any officer stated that she "looked shitty." § 87(2)(b) didn't say that the officers used any other profanity and she stated that the officers didn't act in a "bad manner."

Calls were made to § 87(2)(b) on April 4, 2008 and April 23, 2008 to set up a formal interview. On both occasions an unidentified woman picked up and stated that it was the wrong number.

No attempts were made to contact the landlord, § 87(2)(b) because he arrived after the allegations in dispute occurred.

### **Officer Identification**

All officers were identified as responding to the scene based on the sprint-print out. All officers confirmed their presence and involvement at the scene. PO Dym was identified at the subject officer because the physical description that § 87(2)(b) gave to the investigator matched PO Dym's physical description which is a white male with blond hair and blue eyes.

### **Officer Statements**

*PO Eric Dym was interviewed at the CCRB on January 11, 2008 (encl. 8a-8d).* § 87(2)(b)

PO Dym worked from 7:05am to 3:40pm on October 13, 2007. He worked with PO James Vilaichit. Their assignment was to patrol sector MNP. They were both in uniform and worked in a marked motor vehicle; rmp number 1881.

Memo book entries: At 1040hrs a 1050 (dispute) at § 87(2)(b) At 1050Hrs 10-50 90Y (unnecessary).

On October 13, 2007, PO Dym was assigned to patrol the 120th precinct. At approximately 10:40am, PO Dym and PO Vilaichit received a 911 call about a landlord, tenant dispute at § 87(2)(b) in Staten Island. When they arrived at § 87(2)(b) they were approached by a woman who said that her neighbor approached her and threatened her with a knife. PO Dym and his partner did a preliminary investigation. The complainant, identified by the investigation as § 87(2)(b) § 87(2)(b) showed them where the tenant, § 87(2)(b) lived. The officers asked the complainant to stay to the side so they can talk to § 87(2)(b) PO Dym and PO Vilaichit knocked on the door several times. PO Dym denied that he or any other officer told § 87(2)(b) "If you don't open this door we are going to arrest you and break this door down." § 87(2)(b) opened the door. PO Dym and PO Vilaichit asked § 87(2)(b) if they can talk to her about the situation and § 87(2)(b) let the officers come into her apartment so that they were away from § 87(2)(b) to alleviate any problems. PO Dym and PO Vilaichit questioned § 87(2)(b) about the incident; she was asked if she had a knife and she said no. PO Dym denied saying to Ms § 87(2)(b) "What the fuck is going on here?" PO Dym acknowledged that he smelled marijuana in § 87(2)(b)'s apartment and asked her about it. § 87(2)(b) denied any marijuana use. PO Dym denied stating to Ms § 87(2)(b) "If you are smoking dope, you are going to get arrested." He denied saying that § 87(2)(b) looked "shitty" or that he wanted her to "stop her shit." § 87(2)(b) did not want to press charges and they were referred to tenant and landlord court. PO Dym and PO Vilaichit were able to talk to the landlord who met them at the front of § 87(2)(b) The landlord said he would take this to civil court and plans to evict the tenant. No charges were pressed.

Two other officers also showed up to the scene. The only officer PO Dym remembered was PO Frank Gigliotti. PO Dym did not recall if the other two officers who showed up at the scene went into the apartment with them. PO Dym believed that at the time when he knocked on the door all four officers were there but wasn't sure.

*PO James Vilaichit was interviewed at the CCRB on January 11, 2008 (encl. 9a-9d).* § 87(2)(b)

PO James Vilaichit worked from 0705hours to 1540hours on October 13, 2007. PO Vilaichit's assignment was patrol sector MNP and worked with PO Eric Dym. They were in uniform and in a marked motor vehicle.

PO Vilaichit had no memo entries regarding this incident.

On October 13, 2007 at approximately 10:40am, PO Vilaichit and PO Dym responded to a 911 call about a tenant dispute with a knife. There was also a backing unit that came to the scene. PO Gigliotti was present at the scene but PO Vilaichit did not remember who the other officer was. PO Vilaichit and PO Dym arrived at the apartment and the complainant, identified by the investigation as § 87(2)(b) § 87(2)(b) stated that her neighbor, who was identified by the investigation as § 87(2)(b) was banging on her door and

threatened to kill her. She stated she had an ongoing problem with this neighbor. PO Vilaichit and PO Dym wanted to interview § 87(2)(b). They knocked on § 87(2)(b)'s door and at first she did not answer. At this time PO Vilaichit believed all four officers were there. PO Vilaichit denied that he or any other officer told § 87(2)(b) "If you don't open this door we are going to arrest you and break this door down." They continued knocking and she eventually answered the door and PO Dym and PO Vilaichit entered her apartment for the purpose of being away from § 87(2)(b). PO Vilaichit did not remember if they specifically asked permission to come into her apartment. PO Vilaichit was not sure where the backing unit was at the time they were in § 87(2)(b)'s apartment. PO Vilaichit and PO Dym asked for § 87(2)(b)'s side of the story. PO Vilaichit denied stating to § 87(2)(b) "What the fuck is going on here?" § 87(2)(b) stated she was having a dispute with her neighbor and she denied having a knife.

PO Vilaichit and PO Dym looked in plain view of her apartment and they didn't see a knife. There was a smell of marijuana in the air and PO Vilaichit and PO Dym asked her about it and she stated that she had no drugs in the house and she didn't do drugs. § 87(2)(b) seemed high but PO Vilaichit and PO Dym didn't see anything. PO Vilaichit denied saying to § 87(2)(b) "You should see the way you look right now, and you look shitty." PO Vilaichit denied that he or PO Dym told her she would be arrested. § 87(2)(b) did not want to press charges and the officers left the apartment and when they went outside the landlord arrived and told the officers that the two individuals were having constant problems and § 87(2)(b) was being evicted.

*PO Frank Gigliotti was interviewed at the CCRB on January 11, 2008 (encl.10a-10d).* § 87(2)(b)

On October 13, 2007, PO Frank Gigliotti worked from 0705 hours to 1540 hours. He worked Sector IJK with PO Joseph Torres in uniform and in a marked motor vehicle.

PO Gigliotti did not have any memo book entries regarding this incident.

On October 13, 2007 at approximately 12:20pm, PO Gigliotti and PO Torres were a backing unit for PO Dym and PO Vilaichit and went to call about a dispute with a knife. PO Gigliotti and PO Torres met PO Dym and PO Vilaichit at § 87(2)(b) in Staten Island. When PO Dym and PO Vilaichit knocked on § 87(2)(b)'s door, PO Gigliotti and PO Torres were standing with them. PO Gigliotti stood by the door way and did not go into § 87(2)(b)'s apartment. He didn't recall the conversation between PO Dym, PO Vilaichit and § 87(2)(b). PO Gigliotti denied hearing any other officer tell § 87(2)(b) "If you don't open this door we are going to arrest you and break this door down." PO Gigliotti denied hearing an officer state to § 87(2)(b) "What the fuck is going on here?" PO Gigliotti acknowledged that § 87(2)(b)'s apartment smelled like marijuana but didn't recall the officers speaking with her about it. He acknowledged that PO Dym and PO Vilaichit stepped into § 87(2)(b)'s apartment for the purpose of questioning her without § 87(2)(b) there. He believed he heard the officers ask § 87(2)(b) if they could come in her apartment. PO Gigliotti denied hearing any officer saying to § 87(2)(b) "You should see the way you look right now, and you look shitty." PO Gigliotti denied hearing any officer tell § 87(2)(b) that she would be arrested.

*PO Joseph Torres was interviewed at the CCRB on January 9, 2008 (encl 6a-6d.)* § 87(2)(b)

PO Torres worked from 0705hours to 540hours on October 13, 2008. He worked sector IJK with PO Frank Gigliotti. They were in uniform and worked in an unmarked motor vehicle.

PO Torres had no memo book entries regarding this incident.

PO Torres said he was a backing unit to a 911 call that was made. He was standing outside of § 87(2)(b)'s apartment in the hallway of § 87(2)(b) in Staten Island with PO Gigliotti and two other officers that he did not remember. PO Torres did not make any contact with § 87(2)(b). He saw two officers walk into an apartment. He said there were about four or five people in the apartment. PO Torres did not see any officer conduct a search. He said he was at the location for about 5-10min. PO Torres is not sure if PO Gigliotti walked into the apartment. PO Torres denied hearing any profanity from the other officers. He denied that he or any other officer said, "What the fuck is going on here?" He said he

did not hear any officer threaten to arrest any individual on the scene or bring them to the hospital. PO Torres acknowledged that there was an odor from the apartment which smelled like marijuana. PO Torres denied hearing any officer saying to § 87(2)(b) “You should see the way you look right now, and you look shitty.” PO Torres denied hearing any officer tell § 87(2)(b) “Stop your shit now.” PO Torres denied hearing an officer say that they would break down the door.

## **NYPD Documents**

### **Sprint (encl. 12a-12b).**

At 10:31am, § 87(2)(b) § 87(2)(b) called 911 and stated that she was threatened by another female with a knife at § 87(2)(b) in Staten Island. § 87(2)(b) stated that there were no injuries and provided her call back number.

At 10:33am, § 87(2)(b) provided a description of the other female as a Hispanic female, who was short and wearing a blue hat and blue jacket. She stated that the female threatened her with a knife and kicked her door. Sector M arrived on scene at 10:40am, followed by sector I at 10:41am. At 10:48am, sector M put over a disposition of 10-90y, unnecessary.

### **Roll Call (encl. 11a-11g).**

According to the Tour 2 roll call, PO Eric Dym, PO James Vilaichit were assigned to sector MNP. PO Frank Gigliotti and PO Joseph Torres were assigned to sectors IJK.

§ 87(2)(b)

### **Civilian CCRB History (encl. 3A).**

This is § 87(2)(b)'s first CCRB complaint.

### **CCRB History of PO Eric Dym (encl. 2a).**

PO Dym does not have any allegations substantiated against him.

## **Conclusions and Recommendations**

### **Undisputed facts**

It is undisputed that there was a dispute between § 87(2)(b) and § 87(2)(b). It is undisputed that the officers entered § 87(2)(b)'s apartment.

§ 87(2)(b), § 87(2)(g)

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#### **Allegation not pleaded**

An allegation that the officers entered and search § 87(2)(b)'s apartment was not pleaded because § 87(2)(b) did not allege that the officers improperly entered her apartment. § 87(2)(b) told the officers they could search her apartment. The threat of property damage will be subsumed in the allegation of threat of arrest.

#### **Allegation A: PO Eric Dym threatened to arrest § 87(2)(b)**

§ 87(2)(b) stated that PO Dym threatened to break her door down and told her that he would arrest her next time she didn't open the door. § 87(2)(b), § 87(2)(g) stated that § 87(2)(b) had a knife and that she had just threatened to kill her. PO Dym asked § 87(2)(b) numerous times to open her door and she did not comply. According to *Kamins New York Search and Seizure (encl. 1a)* § 87(2)(b), § 87(2)(g)

#### **Allegation B: PO Eric Dym spoke obscenely to § 87(2)(b)**

§ 87(2)(b) stated that PO Dym stated to her, "What the fuck is going on in here?" Ms. § 87(2)(b) also stated that PO Dym told her she looked "shitty" and that he wanted her to "stop her shit." PO Dym denied using any profanity and the other officers denied hearing PO Dym used any profanity towards § 87(2)(b). § 87(2)(b) denied that any officer stated that § 87(2)(b) looked shitty. § 87(2)(b) did not acknowledge or deny that an officer used any other profanity. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: